PUBLIC HEALTH ADVISORY AND APPEAL BOARD

Annual Report 1987-88

Alberta

Alberta
HEALTH

Office of the Minister

323 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-3665

June, 1989

Honourable Dr. David Carter
Office of the Speaker
Legislative Assembly of Alberta
Room 325, Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Sir:

I have the honour to present the Annual Report of the Public Health Advisory and Appeal Board for the year August 1, 1987 to July 31, 1988.

Respectfully submitted,

Nancy J. Betkowski
Minister

90-06336//

Alberta

PUBLIC HEALTH ADVISORY
AND APPEAL BOARD

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June, 1989

Honourable Nancy J. Betkowski
Minister
Alberta Health
Room 323, Legislature Building
Edmonton, Alberta
T5K 2B6

Madam:

I have the honour and privilege to present the Annual Report of the Public Health Advisory and Appeal Board for the year August 1, 1987 to July 31, 1988.

Respectfully submitted,

Max McCann
Chairman
Public Health Advisory
and Appeal Board

PUBLIC HEALTH ADVISORY AND APPEAL BOARD

T.J. (John) Walker, M.D.
Chairman
Fort Macleod

Max McCann
Vice Chairman
St. Albert

Muriel Abdurahman
Member
Fort Saskatchewan

Gerry Blum
Member
Calgary

Sergi Causing, M.D.
Member
Edmonton

Kathleen Clarke
Member
Calgary

Barbara Cumberland
Member
Red Deer

Robert (Bob) Field
Member
Grande Prairie

+ Norman Maloney
Member
Calgary
Deceased November, 1988

Charles (Chick) Taylor
Member
Medicine Hat

Jenny Malanchuk
Co-ordinator
Advisory and Appeal Secretariat
Alberta Health
Edmonton

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HISTORY & MANDATE

The Public Health Advisory and Appeal Board was formed on July 31, 1985 (under Section 2 of the Public Health Act, Chapter P-27.1 R.S.A. 1980). It replaced the Provincial Board of Health which had its origins in Alberta's first Public Health Act (c. 1909).

The purpose of the Provincial Board of Health, as stated in the 1909 Act, was 'to take cognizance of the interests of health and life among the people of the province.' It had appeal and advisory functions and used its powers broadly for the protection and improvement of health and the prevention of disease. The board was made up mostly of government officials from various departments concerned with health issues.

The mandate of the Public Health Advisory and Appeal Board is stated in Section 3 of the Public Health Act as follows:

(a) to advise the Minister on matters pertaining to the public health;

(b) to make investigations or inquiries into, collect information relating to or conduct research into any matter relating to the public health and make its report in the manner and at the time specified by the Minister;

(c) on the request of the Lieutenant-Governor in Council, hold public hearings for the purpose of receiving submissions on matters pertaining to the public health and make its report to the Minister;

(d) hear appeals pursuant to Section 4 of the *Public Health Act*.

To carry out this mandate the board is comprised of 10 members with varied professional backgrounds who represent all parts of the province.

ADVISORY ACTIVITIES

In 1987-88, the Public Health Advisory and Appeal Board was involved in two major advisory activities: a review of the Food Regulation (Regulation Number 240/85 of the Public Health Act) and a submission to the Premier's Commission on Future Health Care For Albertans.

The Public Health Advisory and Appeal Board's review of the Food Regulation, which will be carried forward to 1988-89, involves conducting research and developing recommendations for the Minister of Health regarding the handling, marketing and control of foods. Within this context, the board is examining perishable foods, bulk foods, pasteurization of milk and, research into modified atmospheric packaging of food. These issues are being examined from the perspective of potential for public health hazards. The Public Health Advisory and Appeal Board's investigation of these issues has involved the call for and review of submissions on the subject from health units and numerous other interested parties in both the public and private sector.

The Public Health Advisory and Appeal Board has also been preparing its Premier's Commission submission. The purpose of its submission is to provide recommendations for the planning of health care services to meet the current and future needs of Albertans. The submission is evolving out of a series of board workshops which are being held in addition to appeal hearings and regular administration hearings. The board is targeting the completion and presentation of its brief for early 1989.

APPEAL ACTIVITIES

The Public Health Act establishes the Public Health Advisory and Appeal Board as an appeal body to hear appeals from decisions of local boards as defined in Section 4 of the Public Health Act. The Public Health Advisory and Appeal Board may confirm, reverse or vary the decision of a local board, and is obliged to give written notice of its decision to the appellant and the local board.

The Board is subject to the general rules of administrative law and natural justice as they apply to quasi-judicial tribunals. To that end, it has retained Donald R. Cranston L.L.B. of the law firm Layton, Weeks and Cranston, to provide independent legal advice.

A total of 13 appeals were heard this year. The following table is a summary of all appeals heard by the Public Health Advisory and Appeal Board from August 1, 1987 to July 31, 1988.

Decision #	Subject	Parties Involved
12/87	Appeal of refusal to permit the sale of convenience foods 35 days after day of preparation	Edmonton Board of Health Brydor Business Enterprises Ltd.
13/87	Appeal of refusal to grant waiver to sell bulk frozen fish and meat products	Alberta West Central Health Unit Freson Market Ltd.
14/87	Appeal of decision re: refuse disposal system	Foothills Health Unit City of Calgary Genstar Corp.
15/87	Appeal of order to remove carpeting from shampoo areas	Edmonton Board of Health Leo H. Gendemann
1/88	Appeal of order to comply with Housing Regulations	Mount View Health Unit Alpine Club of Canada
2/88	Appeal of an order to bury or remove decaying waste	Southeastern Alberta Health Unit Eldorado Vegetable Farms Ltd.
3/88	Appeal of an order to install and utilize a three compartment sink	Mount View Health Unit Dunken's Dimples 'N Donuts Inc.
4/88	Appeal of decision re: refuse disposal system	Foothills Health Unit City of Calgary Genstar Corp.
5/88	Appeal of order to cease piggery operations	Sturgeon Health Unit Hamoen Farms
6/88	Appeal of decision to grant a waiver of 1500 foot distance requirement in the livestock and poultry regulation	Wetoka Health Unit Fercho, Furuness, Waterworth, Thompson & Clarke
7/88	Appeal of decision to grant a waiver for a modified landfill site	Northeastern Alberta Health Unit Wayne & Velma Hudson
8/88	Appeal of order to discontinue sale of bulk fish and meat products	Peace River Health Unit Freson Market Ltd.
9/88	Appeal of refusal to permit the sale of convenience foods 35 days of preparation	Leduc-Strathcona Board of Health Hygaard Fine Food Ltd.

1987-88 SUMMARY OF APPEALS

12/87:
Brydor Business Enterprises Ltd.
Hearing held:
August 4, 1987

Brydor Business Enterprises Ltd. appealed the decision of the Edmonton Board of Health, who refused to grant a waiver of Section 91(1) of the Food Regulation. The board decided to reverse the decision of the Edmonton Board of Health, and grant a waiver to Brydor Business Enterprises Ltd. for convenience foods it currently manufactures. By that waiver, the expiry date on such foods was extended from 28 days to 35 days. The board considered that the application of Section 91(1) of the Food Regulation was a hardship to Brydor Business Enterprises Ltd. in the particular case, and that an adequate degree of protection of the public health could be maintained with the waiver.

13/87:
Freson Market Ltd.
Hearing held:
November 3, 1987

Freson Market Ltd. appealed the decision of the local board of health for the Alberta West Central Health Unit, who refused to issue a waiver of the provisions of Section 78 of the Food Regulations to Freson Market Ltd. with respect to its Hinton Valley IGA Store and Hinton Hill IGA Store. The board upheld the decision of the local board, and accordingly denied the appeal of Freson Market Ltd. The board was not satisfied that the application of Section 78 would cause a hardship to Freson markets Ltd. in the particular case. The company was still at liberty to sell frozen fish and meats, so long as it complied with the provisions of Section 78 of the Food Regulation. Moreover, the board was not satisfied that an adequate degree of protection of the public health would be maintained if the prohibitions contained in Section 78 of the Food Regulation were waived in favour of Freson Market Ltd.

14/87:
The City of Calgary and Genstar Corporation
Hearing Held:
October 14, 1987

At the request of all parties, a preliminary hearing was held on October 14, 1987 to deal with preliminary representations in relations to the appeals of Genstar Corporation and the City of Calgary concerning the development approval given by the Provincial Board of Health to Browning-Ferris Industries Limited on June 19, 1985. Certain objections were taken to the constitution or composition of the board, which were dealt with by that preliminary hearing. The question arose as to whether there ought to be a complete rehearing, or whether the board was able to dispense with certain portions of the hearing in view of earlier proceedings before the board. The board concluded that it must proceed to a complete rehearing of all of the relevant evidence.

15/87:
Leo H. Gendemann
Hearing Held:
November 4, 1987

Mr. Gendemann appealed an order by the Edmonton Board of Health directing Mr. Gendemann to remove carpeting on the floor area of the shampooing stations in his beauty saloon, and replace the carpeting with a material that may be easily cleaned. The board considered the evidence submitted and the applicable Regulation. The board concluded that the flooring in the area of Mr. Gendemann's shop is not in contravention of the Regulation, and that accordingly, the order issued under Section 72 of the *Public Health Act* was issued inappropriately. The appeal was accordingly allowed.

1/88:
Alpine Club of Canada
Hearing Held:
January 11, 1988

The Alpine Club of Canada appealed an order of the Mount View Health Unit directing it to comply with Section 3 of the Housing Regulation under the *Public Health Act*. The Mount View Health Unit was of the view that the facility owned and operated by the Alpine Club of Canada, three kilometres north of the Town of Canmore, is a facility to which Section 3 of the Housing Regulation applied. Specifically, that it was a 'housing premise' as defined in Section 1 of the Housing Regulation. The board concluded that the facility of the Alpine Club of Canada was in the nature of a hotel or motel, and accordingly, Section 3 of the Housing Regulation was not applicable to the facility. That was not to say however, that the balance of the Housing Regulation did not apply to the facility, or that the Recreation Area Regulation may not also apply as well. That, however, was not the issue before the board on this appeal. The appeal was accordingly allowed.

2/88: **Eldorado Vegetable Farms Ltd.** *Hearing Held:* *January 5, 1988*	Eldorado Vegetable Farms Ltd. appealed an order of the Medicine Hat Health Unit (now Southeastern Alberta Health Unit) ordering Eldorado Vegetable Farms Ltd. to take corrective action to bury or remove decaying waste from its property. The board concluded that the dispute between Eldorado Vegetable Farms Ltd. and the Southeastern Alberta Health Unit had not been completely canvassed by those parties, and was capable of	resolution. The board accordingly decided to refer the question back to the local board of health pursuant to Section 4(5) of the *Public Health Act*, and directed the local board to issue an order to Eldorado Vegetable Farms Ltd. containing a direction that Eldorado Vegetable Farms Ltd. clean up the current site by trenching and burying, and thereafter dumping all organic waste materials at a certain location on the property.
3/88: **Dunken's Dimples 'N Donuts Inc.** *Hearing Held:* *January 6, 1988*	Dunken's Dimples 'N Donuts appealed an order made by the Mount View Health Unit to install and properly utilize a three compartment sink as required by	Section 56 of the Food Regulation. After careful consideration of the the evidence, the board denied the appeal and upheld the order of the health unit.
4/88: **The City of Calgary and Genstar Corporation** *Hearing Held:* *January 11 - 15, 1988*	The City of Calgary and Genstar Corporation appealed the decision of the Provincial Board of Health granting approval of the preliminary outline of a proposed refuse disposal system in favour of Browning-Ferris Industries Limited in the Calgary region. After hearing a number of days evidence, and detailed submissions from the various parties, the board decided to reverse the decision of the	Provincial Board of Health issuing a development approval to Browning-Ferris Industries Limited. Detailed consideration was given to the public interest, including issues of need for the landfill site, methane and other landfill gases, groundwater contamination, leachate generation, post-closure monitoring, noise, odor, litter and dust, seagulls, wild animals, security and fencing, and controlled use of the site.

5/88:
Adrian Hamoen and Hamoen Farms
Hearing Held:
February 9, 1988

Adrian Hamoen and Hamoen Farms appealed the order of the Sturgeon Health Unit directing them to cease all piggery operations on the Appellant's land within 500 feet of a neighboring dwelling. The board allowed the appeal, thereby reversing the decision of the Sturgeon Health Unit. The board carefully considered the nature of a piggery operation, and the provisions of the Provincial Board of Health Regulations Respecting the Keeping of Livestock and Poultry (Division 23).

6/88:
Dean and Wendy Furuness, Grahame and Elaine Clarke, Terry and Debbie Thompson, Wayne and Trudy Waterworth, Ray and Yvonne Fercho
Hearing Held:
March 6, 1988

The Appellants appealed the decision of the Wetoka Health Unit to issue a waiver in favour of Mrs. Betty Ann Kamstra of the 1500 foot distance requirement contained in Section 23-21-1(b) of the Provincial Board of Health Regulations Respecting the Keeping of Livestock and Poultry (Division 23). The board upheld the waiver decision of the local board of the Wetoka Health Unit, subject to various restrictions contained in that local board decision. The board found that the application of the provisions in the Livestock and Poultry Regulation would cause a hardship to Mrs. Kamstra in this particular case. The board also found that it was satisfied that an adequate degree of protection to the public health would be maintained if the distance requirement is waived.

7/88:
Wayne and Velma Hudson
Hearing Held:
April 6, 1988

Wayne and Velma Hudson appealed the decision of the local board of the Northeastern Alberta Health Unit granting a waiver of Section 3(1) of the Waste Management Regulation to the County of St. Paul concerning a modified landfill site operated by the County. The board upheld the waiver decision of the local board of the Northeastern Alberta Health Unit subject to three conditions, namely that the conditions established by the local board in its waiver decision be maintained, that the County of St. Paul must move to inform its officials promptly as to the requirements of the current Waste Management Regulations and circulate informational brochures to affected county residents concerning the proper use and operation of the modified landfill site, and that the county immediately undertake proper monitoring of leachate and groundwater, with such consultation from governmental authorities or others as may be required.

8/88:
Freson Marketing Ltd.
Hearing Held:
April 18, 1988

Freson Marketing Ltd. appealed an order issued by the Peace River Health Unit No.21 whereby Freson Market Ltd. was ordered to cease selling bulk frozen food on a self-serve basis at its Manning, Peace River, Fairview and High Prairie stores. The issue for the board to decide was whether frozen fish and meat products fall within the definition of perishable food found in the Food Regulation. The parties agreed that the food in question was sold or offered by sale by Freson Market Ltd. in bulk form, and on a self-serve basis. The board decided to reverse the decision of the Peace River Health Unit No. 21. The board concluded that the evidence was clear that the meats and fish products sold were in a frozen state. The scientific evidence presented to the board indicated that it was impossible for such food to be capable of supporting the growth of pathogenic micro-organisms or the production of toxins. The board accordingly concluded that in such circumstances, the food could not be characterized as perishable food within the meaning of the Food Regulation.

9/88:
Hygaard Fine Foods Ltd.
Hearing Held:
April 26 and 27, 1988

Hygaard Fine Foods appealed the decision of the Leduc-Strathcona local board of health whereby the local board refused or declined to grant a waiver of Section 91(1) of the Food Regulation. The board allowed the appeal and granted a waiver to Hygaard Fine Foods Ltd. of the application of Section 91(1) of the Food Regulation. In doing so, the board included a condition whereby Hygaard Fine Foods Ltd. must ensure that all of its convenience food held in a non-frozen state and that has been packaged in permeable plastic in a carbon-dioxide atmosphere be marked with an expiry date that is not later than 35 days from the date of preparation. The board concluded that the application of Section 91(1) is a hardship to Hygaard Fine Foods Ltd. in this particular case, and that an adequate degree of protection of the public health would be maintained in the event that Hygaard Fine Foods Ltd. was granted a 35 day expiration period.

OTHER ACTIVITIES

In 1985 the board began its practice of visiting several health units across the province each year. The purpose of these visits is to communicate the mandate of the Public Health Advisory and Appeal Board and to keep-in-touch with the activities and concerns of individual health units. In 1987-88 the board visited the Red Deer, Banff, Foothills and Mount View health units, taking the opportunity to hold discussions with the local staff and board members.

The board also visited the Swan Hills waste management facility operated by Chem Security Alberta Limited. Many of the appeals heard by the board deal with waste management and the tour yielded valuable insights into the technology and procedures for proper handling of hazardous waste.

To keep informed about public health issues in general, board members take part in a wide range of public health oriented conventions and conferences and invite guest speakers to regular administrative meetings. In 1987-88 the Public Health Advisory and Appeal Board was represented at the following:

- the Western Waste Management Association Conference on Waste Management in Alberta held September 14 - 18, 1987, in Red Deer, Alberta;
- the Alberta Hospitals Association Annual Conference 'Gripes or Reasons - Aging a Choice of Perception' held November 25 - 27, 1987, in Edmonton, Alberta;
- the Alberta Public Health Association Convention 'Motivate '88' held May 2 - 5, 1988, in Medicine Hat, Alberta;
- the Health Unit Association of Alberta 17th Annual General Meeting 'In Pursuit of Wellness - Promoting and Maintaining Good Health' held November 10 - 13, 1987, in Edmonton, Alberta;
- the Rural Health Care Association of Alberta Triennial Conference 'Quality Care in Rural Alberta' held October 15 and 16, 1987, in Calgary, Alberta;
- the Health Unit Association of Alberta Issues '88 Conference held March 22 - 25, 1988, in Banff, Alberta.

Guest speakers invited to make presentations at board meetings included representatives from the Alberta Planning Board, to share their procedures for hearing appeals. Dr. Alan Murdock, Assistant Deputy Minister of Public Health for Alberta Community and Occupational Health, and managers from the Coordinated Home Care and Alberta Aids to Daily Living/Extended Health Care Programs took part in several Public Health Advisory and Appeal Board meetings to discuss their respective areas of responsibility. Mr. David Parker, Executive Director of the Health Unit Association of Alberta attended a meeting to outline the history and activities of the Association. The Public Health Advisory and Appeal Board gratefully acknowledges the time and efforts of these guest speakers.